

Blank Page

Blank Page

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 283

RAILROAD COMMISSION OF TEXAS, LON A. SMITH,
ERNEST O. THOMPSON, ET AL.,

Appellants,

vs.

THE PULLMAN COMPANY, GUY A. THOMPSON,
TRUSTEE, THE ST. LOUIS, BROWNSVILLE AND
MEXICO RAILWAY COMPANY, DEBTOR, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF TEXAS.

**APPELLEES' MEMORANDUM FOLLOWING ORAL
ARGUMENT.**

In his concluding argument, counsel for the Commission said that, in response to questions from the Bench, we had made extra-record statements touching the existence of the collective bargaining agreements. In this respect counsel for The Commission unintentionally erred.

We had assumed that, considering the Commission's findings (R. 46-52), Appellees would hardly contend, as now seems to be contended (their Reply Brief 15-16), that the order can be satisfied by changing the title of the men now serving as porters in charge, to conductor.

The Pullman Company has a collective bargaining agreement with the Appellant, The Order of Sleeping Car Conductors (R. 99); and with the porters' organization (R. 88). Both agreements have been made pursuant to The Railway Labor Act (R. 99).

As is characteristic of such agreements, seniority rights are recognized. Indeed, conductors have seniority rights in their respective districts (R. 84), as do the porters (R. 88).

The Company has employed no new conductors (except possibly 2 or 3) anywhere in ten years or more (R. 116); and no new porters in Texas in 10 years or more (R. 127). The dropping of cars, with consequent decline in demand for conductors and porters, has followed decline in business. From 1929 to 1934 the Company suffered a drop of more than 50% in number of Pullman passengers hauled, and of 42 or 43% in cars operated and in conductor requirements (R. 93, 125).

Obviously, if the men now serving as porters in charge, approaching the retirement age (Appellees' Brief 15), should give up their senior ranking as porters (R. 87-88) to take places as conductors they would be on the extra list; that is, presently unemployed, with little or no prospect of employment later.

Counsel for the Commission, while complaining of the absence of the Commission record, stated that we had offered it in evidence. We offered it not merely once but twice. The second time, the trial Court called upon counsel for the Commission to say whether they wanted it in or out.

Whereupon they objected to its being received, and the Court again excluded it (R. 354-355).

Respectfully submitted,

LOWELL M. GREENLAW,
HERBERT S. ANDERSON,
CHARLES L. BLACK,
IRELAND GRAVES,

Attorneys for The Pullman Company.

CLAUDE POLLARD,
F. B. WALKER,

*Attorneys for Railroad Companies,
and Trustees, Appellees.*

IRELAND GRAVES,
Attorney for Intervener Appellees.

February 6, 1941.

Blank Page

SUPREME COURT OF THE UNITED STATES.

No. 283.—OCTOBER TERM, 1940.

Railroad Commission of Texas, Lon A.
Smith, Ernest O. Thompson, et al.,
Appellants,

vs.

The Pullman Company, Guy A.
Thompson, Trustee, The St. Louis,
Brownsville and Mexico Railway
Company, Debtor, et al.

Appeal from the District
Court of the United
States for the Western
District of Texas.

[March 3, 1941.]

Mr. Justice FRANKFURTER delivered the opinion of the Court.

In those sections of Texas where the local passenger traffic, is slight, trains carry but one sleeping car. These trains, unlike trains having two or more sleepers, are without a Pullman conductor; the sleeper is in charge of a porter who is subject to the train conductor's control. As is well known, porters on Pullmans are colored and conductors are white. Addressing itself to this situation, the Texas Railroad Commission after due hearing ordered that "no sleeping car shall be operated on any line of railroad in the State of Texas . . . unless such cars are continuously in the charge of an employee . . . having the rank and position of Pullman conductor". Thereupon, the Pullman Company and the railroads affected brought this action in a federal district court to enjoin the Commission's order. Pullman porters were permitted to intervene as complainants, and Pullman conductors entered the litigation in support of the order. Three judges having been convened, Judicial Code, § 266, as amended, 28 U. S. C. § 380, the court enjoined enforcement of the order. From this decree, the case came here directly. Judicial Code, § 238, as amended, 28 U. S. C. § 345.

The Pullman Company and the railroads assailed the order as unauthorized by Texas law as well as violative of the Equal Protection, the Due Process and the Commerce Clauses of the Constitution. The intervening porters adopted these objections but

2 *Railroad Comm'n of Texas et al. vs. The Pullman Co., et al.*

mainly objected to the order as a discrimination against Negroes in violation of the Fourteenth Amendment.

The complaint of the Pullman porters undoubtedly tendered a substantial constitutional issue. It is more than substantial. It touches a sensitive area of social policy upon which the federal courts ought not to enter unless no alternative to its adjudication is open. Such constitutional adjudication plainly can be avoided if a definitive ruling on the state issue would terminate the controversy. It is therefore our duty to turn to a consideration of questions under Texas law.

The Commission found justification for its order in a Texas statute which we quote in the margin.¹ It is common ground that if the order is within the Commission's authority its subject matter must be included in the Commission's power to prevent "unjust discrimination . . . and to prevent any and all other abuses" in the conduct of railroads. Whether arrangements pertaining to the staffs of Pullman cars are covered by the Texas concept of "discrimination" is far from clear. What practices of the railroads may be deemed to be "abuses" subject to the Commission's correction is equally doubtful. Reading the Texas statutes and the Texas decisions as outsiders without special competence in Texas law, we would have little confidence in our independent judgment regarding the application of that law to the present situation. The lower court did deny that the Texas statutes sustained the Commission's assertion of power. And this represents the view of an able and experienced circuit judge of the circuit which includes Texas and of two capable district judges trained in Texas law. Had we or they no choice in the matter but to decide what is the law of the

¹ Vernon's Anno. Texas Civil Statutes, Article 6445:

"Power and authority are hereby conferred upon the Railroad Commission of Texas over all railroads, and suburban, belt and terminal railroads, and over all public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection therewith in this State, and over all persons, associations and corporations, private or municipal, owning or operating such railroad, wharf, dock, pier, elevator, warehouse, shed, track or other property to fix, and it is hereby made the duty of the said Commission to adopt all necessary rates, charges and regulations, to govern and regulate such railroads, persons, associations and corporations, and to correct abuses and prevent unjust discrimination in the rates, charges and tolls of such railroads, persons, associations and corporations, and to fix division of rates, charges and regulations between railroads and other utilities and common carriers where a division is proper and correct, and to prevent any and all other abuses in the conduct of their business and to do and perform such other duties and details in connection therewith as may be provided by law."

state, we should hesitate long before rejecting their forecast of Texas law. But no matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination. The last word on the meaning of Article 6445 of the Texas Civil Statutes, and therefore the last word on the statutory authority of the Railroad Commission in this case, belongs neither to us nor to the district court but to the supreme court of Texas. In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication. *Glenn v. Field Packing Co.*, 290 U. S. 177; *Lee v. Bickell*, 292 U. S. 415. The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court. The resources of equity are equal to an adjustment that will avoid the waste of a tentative decision as well as the friction of a premature constitutional adjudication.

An appeal to the chancellor, as we had occasion to recall only the other day, is an appeal to the "exercise of the sound discretion, which guides the determination of courts of equity". *Beal v. Missouri Pacific R. R.*, No. 72; decided January 20, 1941. The history of equity jurisdiction is the history of regard for public consequences in employing the extraordinary remedy of the injunction. There have been as many and as variegated applications of this supple principle as the situations that have brought it into play. See, for modern instances, *Beasley v. Texas & Pacific Ry.*, 191 U. S. 492; *Harrisonville v. Dickey Clay Co.*, 289 U. S. 334; *United States v. Dern*, 289 U. S. 352. Few public interests have a higher claim upon the discretion of a federal chancellor than the avoidance of needless friction with state policies, whether the policy relates to the enforcement of the criminal law, *Fenner v. Boykin*, 271 U. S. 240; *Spielman Motor Co. v. Dodge*, 295 U. S. 89; or the administration of a specialized scheme for liquidating embarrassed business enterprises, *Pennsylvania v. Williams*, 294 U. S. 176; or the final authority of a state court to interpret doubtful regulatory laws of the state, *Gilchrist v. Interborough Co.*, 279 U. S. 159; cf. *Hawks v. Hamill*, 288 U. S. 52, 61. These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, "exercising a wise discretion", restrain their authority because of "scrupulous regard for the rightful independence of the

4 *Railroad Comm'n of Texas et al. vs. The Pullman Co., et al.*

state governments" and for the smooth working of the federal judiciary. See *Cavanaugh v. Looney*, 248 U. S. 453, 457; *Di Giovanni v. Camden Ins. Assn.*, 296 U. S. 64, 73. This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers. Compare 37 Stat. 1013; Judicial Code, § 24(1), as amended, 28 U. S. C. § 41(1); 47 Stat. 70; 29 U. S. C. §§ 101-15.

Regard for these important considerations of policy in the administration of federal equity jurisdiction is decisive here. If there was no warrant in state law for the Commission's assumption of authority there is an end of the litigation; the constitutional issue does not arise. The law of Texas appears to furnish easy and ample means for determining the Commission's authority. Article 6453 of the Texas Civil Statutes gives a review of such an order in the state courts. Or, if there are difficulties in the way of this procedure of which we have not been apprised, the issue of state law may be settled by appropriate action on the part of the State to enforce obedience to the order. *Beal v. Missouri Pacific R. R.*, *supra*; Article 6476, Texas Civil Statutes. In the absence of any showing that these obvious methods for securing a definitive ruling in the state courts cannot be pursued with full protection of the constitutional claim, the district court should exercise its wise discretion by staying its hands. Compare *Thompson v. Magnolia Co.*, 309 U. S. 478.

We therefore remand the cause to the district court, with directions to retain the bill pending a determination of proceedings, to be brought with reasonable promptness, in the state court in conformity with this opinion. Compare *Atlas Ins. Co. v. Southern, Inc.*, 306 U. S. 563, 573, and cases cited.

Reversed and remanded.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.